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In re Application of
TATSUKAWA et al.
Application No. 10/531,522
PCT No.: PCT/JP04/17173
Int. Filing Date: 18 November 2004
Priority Date: 28 November 2003
Attorney Docket No.: 36856.1342
For: LAMINATED CERAMIC ELECTRONIC
COMPONENT AND METHOD FOR
PRODUCING THE SAME

DECISION ON PETITION
UNDER 37 CFR 1.181

This decision is issued in response to applicant's "Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment" filed in the United States Patent and Trademark Office (PTO) on 21 November 2007. No petition fee is required.

BACKGROUND

On 18 November 2004, applicant filed international application no. PCT/JP04/17173 which claimed a priority date of 28 November 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 09 June 2005. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 28 May 2006.

On 15 April 2005, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia,: the basic national fee; a translation of the international application; and a preliminary amendment.

On 03 October 2005, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 15 November 2007, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Abandonment indicating that the application was abandoned for failure to respond to the Notification of Missing Requirements mailed 03 October 2005.

On 21 November 2007, applicant filed the petition considered herein. The petition requests withdrawal of the holding of abandonment, stating that a response to the Notification Of Missing Requirements was timely filed via facsimile on 28 October 2005.

DISCUSSION

The application file does not contain the materials purportedly filed by facsimile on 28 October 2005. In order to confirm the 28 October 2005 filing of the materials accompanying the present petition, applicants must satisfy the requirements set forth in 37 CFR 1.8(b), which states the following:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The present petition is accompanied by a document entitled "Response To Notification Of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office" that references an attached declaration, contains a Credit Card Payment Form in the amount of the required surcharge but bears a "Certificate of Mailing" statement. The Certificate of Mailing states that the accompanying materials were deposited with the United States Postal Service on 28 October 2005. The "Response To

Notification Of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office" does not include a "Certificate of Transmission" statement as required by 37 CFR 1.8(a). Since, applicant did not include the appropriate "certification" statement, the petition papers cannot be considered under 37 CFR 1.8(b).

In summary, petitioners have not provided the proper showing necessary to withdraw the holding of abandonment.

Petitioners may wish to consider filing a petition under 37 CFR 1.137(b) to revive the instant application. Any petition filed under 37 CFR 1.137(b) must meet the criteria indicated in 37 CFR 1.137. This suggestion to consider filing a petition under 37 CFR 1.137(b) should not be construed as an indication as to whether any such petition will be favorably considered.

CONCLUSION

Applicant's petition to withdraw the holding of abandonment is **DISMISSED** without prejudice.

Any request for reconsideration must be submitted within **TWO (2) MONTHS** of the mail date of the present decision and must include the materials required to satisfy 37 CFR 1.8(b)(2) and (3), as discussed above.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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